
DRAFT STATUTORY INSTRUMENTS

2018 No.

**The Transfrontier Shipment of Radioactive Waste
and Spent Fuel (EU Exit) Regulations 2018**

Citation and commencement

1. These Regulations may be cited as the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2018 and come into force on exit day.

Interpretation

2. In these Regulations—

“Chief Inspector” means the Chief Inspector for Northern Ireland appointed under section 4(7) of the Radioactive Substances Act 1993⁽¹⁾;

“competent authority” (except when referring to the competent authority of another country) means—

- (a) in England, the Environment Agency;
- (b) in Scotland, the Scottish Environment Protection Agency;
- (c) in Wales, the Natural Resources Body for Wales;
- (d) in Northern Ireland, the Chief Inspector;

“holder” means any person who, before carrying out a shipment of radioactive waste or spent fuel, is responsible under the applicable national law for such materials and plans to carry out a shipment to a consignee;

“radioactive waste” means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the countries of origin and destination, or by a person whose decision is accepted by those countries, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of each of those countries;

“reprocessing” means a process or operation, the purpose of which is to extract radioactive isotopes from spent fuel for further use;

“shipment” means the whole of operations involved in moving radioactive waste or spent fuel from a country of origin to a country of destination and “ship” must be construed in accordance with this definition;

“spent fuel” means nuclear fuel that has been irradiated in and permanently removed from a reactor core; spent fuel may either be considered as a usable resource that can be reprocessed or be destined for final disposal with no further use foreseen and treated as radioactive waste; and

“third country” means a country that is not a Member State of the European Union.

Application

3.—(1) These Regulations apply to transfrontier shipments of radioactive waste or spent fuel if both the quantity and the concentration of a consignment exceed the levels laid down in Table B of Annex VII of Council Directive 2013/59/Euratom(2)(the “Basic Safety Standards Directive 2013”).

(2) They do not apply to—

- (a) a shipment of disused sources to a supplier or manufacturer of radioactive sources or to a recognised installation;
- (b) a shipment of radioactive materials recovered for further use through reprocessing; or
- (c) a shipment of waste that contains only naturally occurring radioactive material that does not arise from practices.

(3) In this regulation—

“disused source” means a sealed source which is no longer used or intended to be used for the practice for which authorisation was granted;

“practice” means a human activity that can increase the exposure of individuals to radiation from an artificial source, or from a natural radiation source where natural radionuclides are processed for their radioactive, fissile or fertile properties, except in the case of an emergency exposure;

“recognised installation” means a facility located in the territory of a country which is either:

- (a) authorised by the competent authorities of that country in accordance with its national law for the long-term storage or disposal of sealed sources; or
- (b) an installation duly authorised under its national law for the interim storage of sealed sources; and

“sealed source” has the meaning given to it in Article 4(90) of the Basic Safety Standards Directive 2013.

Transfrontier shipment of radioactive waste or spent fuel

4.—(1) It is an offence to ship radioactive waste or spent fuel—

- (a) from the United Kingdom to any other country; or
- (b) from any other country into the United Kingdom,

except in accordance with an authorisation granted by the competent authority under these Regulations.

(2) An offence will not be committed under this regulation if a shipment is made in accordance with an extant authorisation granted by the competent authority before exit day.

(3) An offence will not be committed under this regulation if a shipment is made into the United Kingdom from a Member State provided that the shipment is made in accordance with an extant authorisation granted by the Member State of origin before exit day and the consent of the competent authority has been obtained.

(4) An offence will not be committed under this regulation if a shipment is made into the United Kingdom from a third country by way of transit to a Member State provided that the shipment is made in accordance with an extant authorisation granted by the Member State of destination before exit day and the consent of the competent authority has been obtained.

(5) An offence will not be committed under this regulation if a shipment is made into the United Kingdom from a third country by way of transit to another third country provided that the shipment

(2) OJNo. L 13, 17.01.2014, p.1.

is made in accordance with an extant authorisation granted by the Member State in which the radioactive waste or spent fuel first entered the European Union and the consent of the competent authority has been obtained.

Authorisations

5.—(1) An authorisation granted under these Regulations may be granted in respect of more than one shipment, provided that—

- (a) the radioactive waste or spent fuel to which it relates essentially has the same physical, chemical and radioactive characteristics; and
- (b) the shipments are to be made from the same holder to the same consignee and involve the same competent authorities.

(2) An authorisation cannot be valid for a period of more than three years from the date on which it is granted.

Prohibited exports

6. A competent authority must not authorise shipments—

- (a) to a destination south of latitude 60° south;
- (b) to an African, Caribbean or Pacific state that is party to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States and the European Community and its Member States, (Cotonou ACP-EC Agreement)⁽³⁾, unless the shipment is a return of radioactive waste to its country of origin following treatment or reprocessing in the United Kingdom; or
- (c) to any other country that does not have the administrative and technical capacity and regulatory structure to manage the radioactive waste or spent fuel safety, as stated in the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management⁽⁴⁾.

Notification of arrival in the United Kingdom

7.—(1) Any person holding an authorisation granted under these Regulations who receives a shipment of radioactive waste or spent fuel from outside the United Kingdom must notify the competent authority within fifteen days of its receipt.

(2) Failure to comply with this regulation is an offence.

Notification of arrival in the country of destination

8.—(1) Any person holding an authorisation granted under these Regulations who has shipped radioactive waste or spent fuel from the United Kingdom to another country must notify the competent authority that the shipment has reached its destination within 15 days of its arrival.

(2) The person holding the authorisation must take all reasonable steps to obtain and include in the notification a declaration or certification by the consignee stating that the radioactive waste or spent fuel has reached its proper destination and indicating the customs post of entry into the country of destination.

(3) Failure to comply with this regulation is an offence.

(3) Signed on 23 June 2000 and available at <http://www.acpsec.org/en/conventions/cotonou/accord1.htm>.

(4) Available at <http://www.iaea.org/Publications/Documents/Infocircs/1997/infocirc546.pdf>.

Documentation

9.—(1) Any person shipping radioactive waste or spent fuel pursuant to an authorisation granted under these Regulations must ensure that it is accompanied at all times by a form certifying that the authorisation procedure under these Regulations has been complied with and failure to comply with this requirement is an offence.

(2) The form referred to in this regulation must be whatever standard form that may be prescribed for this purpose by the Secretary of State and issued when the authorisation is granted.

Procedure

10.—(1) All applications for an authorisation must be made using whatever standard form that may be prescribed for this purpose by the Secretary of State.

(2) It is an offence to make a false or misleading statement in an application.

(3) Schedule 1 (procedures) has effect.

Issue of authorisations for shipments of radioactive waste

11.—(1) A competent authority must not authorise a shipment of radioactive waste unless this regulation is complied with.

(2) An applicant must make a written assessment of all practicable options for management of the radioactive waste.

(3) In the case of low-level waste, the proposed shipment must be for—

- (a) the recovery of re-usable materials;
- (b) treatment to make its subsequent storage and disposal more manageable;
- (c) sending samples for investigative analysis; or
- (d) the return to the country of origin of radioactive waste resulting from the processing of radioactive waste or spent fuel in another country (or an equivalent amount of other radioactive waste by way of substitute).

(4) In the case of intermediate-level or high-level waste, the proposed shipment must be for—

- (a) the recovery of re-usable materials, where this is the genuine prime purpose;
- (b) treatment to make its subsequent storage and disposal more manageable, in cases—
 - (i) where the processes are at a developmental stage; or
 - (ii) which involve quantities that are too small for the process to be practicable in the country of origin;
- (c) sending samples for investigative analysis; or
- (d) the return to the country of origin of radioactive waste resulting from the processing of radioactive waste or spent fuel in another country (or an equivalent amount of other radioactive waste by way of substitute).

(5) If the processes at paragraphs (3) and (4) would add materially to the radioactive waste needing to be disposed of in the country of destination, the applicant must demonstrate that the waste will be returned to the country of origin, to a timescale agreed by the competent authorities in the countries of origin and destination.

(6) Notwithstanding paragraphs (3), (4) and (5), radioactive waste may be imported for treatment and disposal in the United Kingdom—

- (a) if it is in the form of spent or disused sealed sources that were manufactured in the United Kingdom; or

- (b) if it arises from small users, such as hospitals, situated in—
 - (i) countries that produce such small quantities of radioactive waste that the provision of their own specialised installations would be impractical, or
 - (ii) countries that cannot reasonably be expected to acquire suitable disposal facilities.
- (7) Notwithstanding paragraphs (2) to (6), radioactive waste arising from the reprocessing of spent fuel may be returned to its country of origin.
- (8) In this regulation—
 - “low-level waste” means radioactive waste having a radioactive content not exceeding four gigabecquerels per tonne (GBq/te) of alpha activity or twelve GBq/te of beta or gamma activity;
 - “intermediate level waste” means radioactive waste with radioactivity levels exceeding the upper boundaries for low-level waste, but which does not require the heat generated from the waste to be taken into account in the design of storage or disposal facilities; and
 - “high level waste” means radioactive waste in which the temperature may rise significantly as a result of its radioactivity, so that this factor has to be taken into account in designing storage or disposal facilities.

Appeals

- 12.—**(1) An applicant whose application for an authorisation is refused, or granted subject to conditions, may appeal in writing within two months of the decision, giving full reasons, to—
- (a) in England, the Secretary of State;
 - (b) in Scotland, the Scottish Ministers;
 - (c) in Wales, the Welsh Ministers;
 - (d) in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.
- (2) The appellant body may confirm the original decision or direct the competent authority to grant an authorisation, with or without conditions, or to vary the conditions of an authorisation.

Unlawful Shipments

- 13.—**(1) The competent authority may decide that a shipment may not be completed if it is not in accordance with these Regulations or in accordance with its authorisation granted under these Regulations.
- (2) If the competent authority so decides it must immediately inform the competent authorities in all countries involved in the shipment.
- (3) In the case of radioactive waste or spent fuel that has been brought into the United Kingdom, the person holding the authorisation granted under these Regulations must either return the consignment to the country of origin if instructed to do so by the competent authority, taking corrective safety measures if necessary, or otherwise dispose of it as instructed by the competent authority and failure to comply with an instruction of the competent authority is an offence.
- (4) In the case of radioactive waste or spent fuel that is being or has been shipped from the United Kingdom—
- (a) unless alternative safe arrangements can be made, the competent authority must serve a notice on the person holding the authorisation requiring the authorised person to take the shipment back, and
 - (b) the person holding the authorisation must comply with the notice, taking corrective safety measures if necessary, and failure to do so is an offence.

- (5) The person holding the authorisation is liable for costs arising if a shipment is not completed.

Notices

14.—(1) Schedule 2 makes provision in relation to notices served by an authorised officer of the competent authority and references in that Schedule to an “authorised officer” are references to such a person.

- (2) Failure to comply with such a notice is an offence.

Powers to give directions

15. The Secretary of State in England, Welsh Ministers in Wales, Scottish Ministers in Scotland and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland may, in relation to any application for an authorisation, give to the competent authority directions as to whether the authorisation is to be granted, the conditions to which it must be subject, and the competent authority must comply with the direction if this is compatible with these Regulations.

Penalties

16.—(1) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary of other similar person of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(3) For the purposes of paragraph (2) above, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) Where an offence that has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence.

Revocation

17.—(1) The following are revoked—

- (a) the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008⁽⁵⁾;
- (b) paragraphs 310 to 312 of Schedule 4 to the Natural Resources Body for Wales (Functions) Order 2013⁽⁶⁾; and
- (c) paragraph 143 of Schedule 3 to the Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014⁽⁷⁾.

(5) [S.I. 2008/3087](#).

(6) [S.I. 2013/755](#).

(7) [S.I. 2014/469](#).

(2) The Commission Decision of 5 March 2008 establishing the standard document for the supervision and control of shipments of radioactive waste and spent fuel referred to in Council Directive 2006/117/Euratom(8) is revoked.

Date

Name
Parliamentary Under Secretary of State
Department of Business, Energy and Industrial
Strategy